

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF THE CITY OF BOSTON, MASSACHUSETTS

These Comments are filed on behalf of the City of Boston and the Issuing Authority, Mayor Thomas M. Menino, in support of the comments filed by the National League of Cities and the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NLC and NATOA, The City of Boston believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Boston, Massachusetts is a city with a population of 600,000. Our franchised cable provider is Comcast Corporation and our Open Video System (OVS) over-builder is RCN. Our Regional Bell Operating Company (R-BOC) is Verizon of Massachusetts. Our community has negotiated cable franchises since 1982 and we issued our first OVS agreement in 1996.

Competitive Cable Systems

The City of Boston amended and renewed the original cable franchise of Cablevision Systems Corp., and amended and transferred the Renewal License to Comcast.

RCN originally launched their competition in Boston as an OVS in 1996. At that time, RCN was a partner in a limited liability venture with Boston Edison, our local electric company. In 1999, RCN's OVS became our second cable franchise. Subsequently, RCN reverted back to OVS status with City approval.

The incumbent cable provider sued both RCN and Edison, as well as the City, challenging their access to the Public Right of Way provided through the city's Public Improvement Commission. The U. S. District Court rejected the motion in preliminary hearings.

Under the direction of Mayor Thomas M. Menino to support and encourage the introduction of new technologies and competition, the city administration established an Office of Telecommunications as a point of entry and liaison service for broadband, wireless and telecommunications service seeking to conduct business and provide services to Boston's residents and businesses.

Through its Public Improvement Commission (PIC), Boston established the first fiber optic policy within city government for its Public Right of Way (PROW) management. The Lead Company Policy for underground deployment was adopted in 1988 and has been amended a number of times through the years in order to accommodate the changing needs of the industry while protecting the right of way. It was this policy's collaborative foundation, and the flexibility and understanding of our PIC commissioners, that became a model for other local governments to follow.

Boston has met a number of times over the last year with Verizon of Massachusetts to discuss system upgrades, new services and the potential for franchising. These meetings go above and beyond the weekly sessions before the PIC for PROW management. Rather, the purpose has been a mutual dialogue on how best to assist Verizon as they enter their new video market and provide competitive service in Boston.

To date, Verizon has declined the City's repeated encouragement to enter a franchise negotiation, opting instead to pursue a moderately-paced rebuild of existing plant and line drops at the neighborhood level of city subdivision under Title II. The City has attempted to educate Verizon about the informal and expedited franchising processes available in order to counter the erroneous perception cable franchising is somehow burdensome.

Oddly enough, Verizon has opted to pursue franchising in 40 smaller Massachusetts communities and has already executed some new franchises and begun offering their FiOS service.

Yet, according to comments by Verizon's chief executive officer, Ivan Seidenberg, published in the Wall St. Journal on February 1, 2006 regarding Congressional consideration of national franchising:

"This is the only threatening comment I'll make. . . . Remember, there are some franchises that are big. So let's take the city of Philadelphia -- it's big," he said. "Then you've got all these oodles of them in the state of New Jersey, or Virginia.

"So at some point, if we don't clean up this process, we just won't be in a position to do all the things that we think could be done," he said. "If we don't see some change in behavior here, I think we are going to have to question how much we can do and how fast we do it."

Asked if that meant he would focus on big franchises rather than little ones, he replied, "It's something that we have to think about."

Such comments appear to indicate a decision by Verizon not to pursue franchising in major cities. As such, we can only hope that the absence of any Congressional action on national franchising legislation will have the positive effect on Verizon of forcing them to pursue big city franchising. If and when this happens, the City of Boston stands ready to expedite the process.

Much has been published, as in the article above, about the burden of the franchising process in the communities that Verizon intends to serve as a video provider under Title VI. What Verizon fails to mention is that they are already universal providers of telephony service under Title II in these very same communities. Therefore, they already have an infrastructure, as well as service and administrative support capable of meeting any perceived obstacle. This was something that the cable companies have had to build over the last 23 years in our City. Verizon has had 100 years.

Conclusions

As I hope we've illustrated, the local franchising process in Massachusetts functions well for Boston and for our providers. Working with the industry, we seek to see that the needs of our local residents and communities are met while we balance the business needs of cable providers to utilize our Public Right of Way.

In Boston, we find that our PROW management processes afford swift and balanced access to our streets, involving the industries and providers in our policy development.

Further, while Boston has demonstrated a strong track record of efficient management as a Local Franchising Authority (LFA), we question the role of the Federal Communications Commission (FCC) in seeking to adopt new rules relative to the implementation of Section 621(a)(1) at this time. Section 621(a)(1) was adopted in 1984 and revised in 1992. In addition, the Telecommunications Act of 1996 redefined the video marketplace and who might enter. It would appear that currently scheduled hearings before Congressional committees indicate that Congress has already decided that franchising and competition are within their purview should they decide to pursue it.

Local franchises provide local government with the means to address local issues and appropriately oversee the operations of cable service providers in the interest of local residents.

Historically it has been our experience that, on the few occasions when the FCC has been petitioned over a local matter in our community, the response time has been measured in years, not days, weeks or months. As such, local matters have languished unresolved, to the frustration of our citizens and businesses.

Finally, video providers working with LFA's to establish local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and how local residents will be served. Section 706 affords protection for the provider and guarantees that meeting local needs will not be a burden to their business.

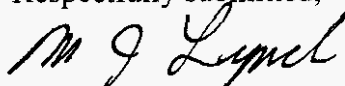
For local communities, cable provides an array of resources to their LFA and residents, including:

1. Franchise fees,
2. Wiring of schools & libraries & municipal buildings,
3. Operating and capital support for Public, Educational & Government (PEG) Access,
4. Producing their own local programming on local issues,
5. Maintaining local customer service centers,
6. Hiring local residents;
7. Adhering to customer service standards, and,
8. Conforming to local construction and public right-of-way (PROW) standards, including restoration compensation.

These resources are equally present for new entrants as for existing users. And Section 706, FCC rules, and federal case law have provided that the franchising related costs are passed through expenses, not borne by the provider.

The City of Boston therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,



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